

**Wittels  
McInturff  
Palikovic**

December 5, 2023

**Via ECF**

The Honorable Joseph A. Marutollo  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Mirkin v. XOOM Energy, LLC*, No. 18-CV-2949 (ARR) (JAM)

Dear Judge Marutollo:

On behalf of Plaintiff and the Class, we write to ask that Your Honor deny as moot Defendants' motion to stay this case pending resolution of their Rule 23(f) petition to appeal Judge Ross's class certification order, Dkt. No. 166.

This afternoon, the Second Circuit denied Defendants' Rule 23(f) petition, Dkt. No. 174, thereby eliminating the predicate of Defendants' stay motion, Dkt. No. 166. Defendants' stay motion was fully briefed and submitted as of yesterday. *See* Dkt. Nos. 166–173.

Denial of Defendants' stay motion is necessary for the parties' agreed-upon class action notice process to proceed. Specifically, in former Magistrate Judge Reyes's October 17, 2023 Class Action Notice Order approving the notice plan, the Court held notice in abeyance until Defendants' stay motion was resolved. *See* Dkt. No. 160 at ¶¶ 6–7, 9 (delaying notice until after the Court rules on Defendants' stay motion).

Because today's ruling from the Second Circuit moots Defendants' stay motion, Plaintiff therefore requests that Your Honor deny XOOM's motion forthwith so that the notice process outlined in the Court's Class Action Notice Order may proceed.

Thank you for the Court's attention to this matter.

Respectfully submitted,

/s/ Ethan D. Roman  
Ethan D. Roman

cc: All counsel of record (via ECF)